



Committee on Legal Affairs and Human Rights

Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges

Declaration of the Committee on Legal Affairs and Human Rights¹

1. The Committee recalls Resolution 2293 (2018), adopted on 26 June 2019, in which the Parliamentary Assembly called on Malta “to establish at the earliest opportunity, within three months, an independent public inquiry in order to ensure fulfilment of its obligations under Article 2 of the European Convention on Human Rights.”
2. The Committee notes that on 20 September 2019, the Maltese government announced the establishment of a “public independent inquiry into the murder of Daphne Caruana Galizia”, at the same time publishing the terms of reference for the inquiry and announcing its membership.
3. The Committee endorses the views of its rapporteur as expressed in his information note (reproduced in appendix) and invites the Maltese authorities to address the issues raised therein as a matter of urgency.

¹ Declaration adopted by the committee on 30 September 2019.

Appendix

Information note

Rapporteur: Mr Pieter OMTZIGT, Netherlands, Group of the European People's Party

1. In its Resolution 2293 (2018), adopted on 26 June 2019, the Assembly called on Malta “to establish at the earliest opportunity, within three months, an independent public inquiry in order to ensure fulfilment of its obligations under Article 2 of the European Convention on Human Rights.”
2. On 20 September 2019, the Maltese government announced the establishment of a “public independent inquiry into the murder of Daphne Caruana Galizia”.² At the same time, it published the terms of reference for the inquiry and announced its membership.
3. The general description of the mandate of the inquiry is “to investigate and report to the Prime Minister... on the death of Ms Daphne Caruana Galizia... and on the events preceding, concomitant with, and following upon, the death”. Whilst apparently broad, this mandate may be limited by the detailed description of the purposes of the inquiry, which focus on ‘State entities’ and ‘the State’.
4. It is essential that the present inquiry investigates whether the activities of political and public office-holders may have contributed to a general climate of impunity and an atmosphere of hostility towards journalists such as Ms Caruana Galizia, or have improperly impinged upon the investigation into her death.
5. The inquiry “shall be held in public”. The Board of Inquiry may, however, conduct “particular hearings” *in camera* when it considers this (i) necessary “to protect the confidentiality of investigations and of information received in confidence both when the confidentiality of those investigations or information is protected by law”, or (ii) “otherwise justified”.
6. Openness and transparency are absolutely fundamental for the present inquiry to be seen as credible and effective and for its findings to be accepted by the public. The second ground on which the Board of Inquiry may decide to hold hearings *in camera* is vaguely worded and potentially extremely broad. The circumstances in which public access to the present inquiry may be restricted should be specified exhaustively and restrictively.
7. The Board of Inquiry “shall have access to all information held by State entities and it shall act in accordance with the Inquiries Act”.
8. This should include the applicability of section 6 of the Inquiries Act, which empowers the chairperson of a Board of Inquiry to summon witnesses, to administer an oath to them and to require them to give evidence or produce documents as they could be in a court of law.
9. The Board of Inquiry shall, “subject to these terms of reference, regulate its own procedure on all matters including the question of access by the family of the deceased and by the public to the proceedings and acts of the inquiry.”
10. The credibility of the inquiry depends on the public having the greatest possible access, including to its “proceedings and acts”. Furthermore, the family of Ms Caruana Galizia should enjoy a privileged position, including the possibility of presenting procedural motions, questioning witnesses and making submissions.
11. The Board of Inquiry “shall endeavour to conclude its work within a time frame of nine months without prejudice to the proper fulfilment of these terms of reference.”
12. This implies the possibility of considerable delay. Should circumstances require the inquiry to continue beyond nine months, then the Board of Inquiry should also be empowered, or even obliged, to publish an interim report after nine months. The inquiry, properly constituted, should also begin its work at the very earliest opportunity. It should be provided with adequate, stable resources for the entire duration of its activities.
13. The three members of the Board of Inquiry were appointed by the prime minister. Serious concerns have already been expressed about the apparent independence and impartiality of these members, even before they have begun their work. Whilst all three have relevant professional qualifications, it is reported that

² Department of Information press release no. PR191965en

one member is involved in the related criminal investigation; another is a lawyer who has been retained by the present government and currently represents or has represented at least three subjects of Ms Caruana Galizia's reporting; and the third holds a discretionary government appointment. The composition of the Board of Inquiry must be such as to dispel any reasonable criticism of its actual or apparent independence and impartiality, if the public is to have confidence in its work. Given Malta's small population, the inclusion of international experts could be one way of achieving this.

14. The inquiry's report to the Prime Minister must of course be published immediately and in full. The credibility and status of the inquiry would be further enhanced were the Maltese government to commit itself to responding promptly to any recommendations contained in the final report, indicating a time-frame for rapid implementation.

15. In my view, the inquiry as currently constituted clearly does not meet the Assembly's expectations. I intend to continue following the situation in advance of the next meeting of the Committee (14-15 November 2019).